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In re Application of
Yeager
Application No. 09/748,467
Filed: December 26, 2000
Attorney Docket No. PGI6044P0483US
For: ZIPPERED FILM AND BAG

OFFICE OF PETITIONS

ON
PETITION

This is a decision on the petitions filed May 7, 2001 and October 19, 2001, to accord the above-identified application a filing date of December 26, 2000. Both petitions will be treated under 37 CFR 1.53.

The petition under 37 CFR 1.53(e) filed May 7, 2001 is **DISMISSED**.

The petition under 37 CFR 1.53(e) filed October 19, 2001 is **GRANTED**.

On December 26, 2000, the application was deposited.

On March 6, 2001, the Office of Initial Patent Examination (OIPE) mailed a Notice of Incomplete Nonprovisional Application stating that the specification and at least one claim were missing and that a filing date would be accorded upon receipt of the missing items.

In response, on May 7, 2001, applicant filed a petition requesting entry of the specification, including at least one claim, of parent application no. 09/456,179, the entire disclosure of which was incorporated by reference into the above-identified application at time of its initial filing.

Petitioner submitted a copy of the prior application's specification, including at least one claim with the petition on May 7, 2001. This petition and application file should have been forwarded to the Office of Petitions for consideration at this time, but this did not occur.

Instead, OIPE noticed that the application did not contain drawings and that petitioner did not submit page 17 with the papers filed on May 7, 2001. The Office of Initial Patent Examination mailed another Notice of Incomplete Nonprovisional Application on October 4, 2001, requesting that petitioner submit drawings and page 17 of the specification.

In response, applicant filed the October 19, 2001 petition. Petitioner once again relied on the incorporation by reference statement filed on December 26, 2000 and supplied the missing drawings and page 17.

The Office allows an applicant to rely upon an incorporation by reference of a parent application when a portion of the child application has been inadvertently omitted.

Based on the incorporation by reference, it appears that the specification, including at least one claim, and drawings were present in the Office on December 26, 2000, albeit in the file of another application, i.e., application No. 09/456,179.

Therefore, on petition and after supplying the missing items, the application may be accorded the requested filing date of December 26, 2000.

In view of the above, the petition filed May 7, 2001 is **DISMISSED**. The application file did not contain a copy of the drawings from the prior application on May 7, 2001. Without the drawings, the above-identified application could not have been accorded a filing date and processed.

The petition filed October 19, 2001 is **GRANTED**. By that date, applicant had filed a specification, including at least one claim, and drawings. On October 19, 2001, the application could have been processed with a filing date of December 26, 2000.

The first petition fee of \$130 will not be refunded since a petition was required to accord the application the requested filing date. Since petitioner paid the petition fee twice, the second petition fee submitted with the October 19, 2001 petition will be credited to deposit account no. 04-1644.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of **December 26, 2000**.¹ The copy of the specification, drawings and claims submitted with the two petitions filed on May 7, 2001 and October 19, 2001 will be used for processing and examination purposes.¹

Telephone inquiries should be directed to the undersigned at (703) 308-6712.



E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

¹ The Office assumes that the specification, drawings, and claims are a true and exact copy of the specification, drawings, and claims submitted in the parent application. If this is not the case, then petitioner must notify the Office. Of course, the primary examiner is expected to compare the instant specification and drawings to the disclosure of the parent application in order to verify that the specification and drawings are, in fact, parts of the disclosure of the prior application.